

## Title I: Surveillance Authority

	RESTORE ACT	Senate Bill	REVISED HOUSE BILL
<b>Role of FISA Court in Approving Surveillance</b>	Court must approve surveillance procedures <u>prior</u> to the start of surveillance.	DNI and AG authorize acquisition and submit procedures to FISA Court within 5 days <u>after</u> surveillance begins. Court has no firm deadline for approving the procedures, but expeditious review is required.	<b>Delays the operational initiation of acquisition of foreign intelligence information</b> for up to 30 days (which may be extended for good cause) until the Court approves the required certification and procedures.
<b>Emergency Surveillance</b>	In an emergency, allows for surveillance to go forward for 45 days before Court approval.	If immediate action required before a certification can be prepared, AG and DNI may initiate acquisition immediately and provide the certification to FISC within 7 days of that determination.	If time does not permit the <b>completion of judicial review</b> prior to the initiation of an acquisition, the AG and DNI can determine that an emergency situation exists and authorize an acquisition. The Court has 30 days to rule on legality of surveillance (which may be extended for good cause).
<b>Exclusivity</b>	FISA is the exclusive means to conduct domestic surveillance for foreign intelligence purposes – unless a specific statutory authorization is enacted.	Maintains the 1978 standard for FISA and Title III as the exclusive means to conduct domestic surveillance.	Adds exclusivity language that requires the enactment of a specific authorization to depart from FISA and Title III. This narrowing of the 1978 language could tie the hands of the Government in the event that either Congress or the FISA Court is unable to act after a terrorist attack or national emergency.
<b>Inspector General Review of Warrantless Surveillance</b>	Provides for review by the Justice Department Inspector General.	No provision needed because SSCI conducted extensive bipartisan review of the President's Terrorist Surveillance Program (TSP).	Allows <b>various Inspectors General</b> , including the Department of Justice IG to <b>substitute their judgment for the bipartisan determinations made by the Congress.</b>
<b>Definition of Electronic Surveillance</b>	No change to the definition of "electronic surveillance."	Excludes from the definition of "electronic surveillance" the targeting of persons reasonably believed to be outside the United States.	<b>Eliminates Senate provision excluding from the definition of "electronic surveillance" the targeting of persons reasonably believed to be outside the United States.</b>

	<b>RESTORE ACT</b>	<b>Senate Bill</b>	<b>REVISED HOUSE BILL</b>
<b>“Reverse Targeting” Guidelines</b>	FISA Court must approve guidelines for determining whether the “significant purpose” of surveillance is to acquire communications of US person.	Contains a clear and explicit prohibition against reverse targeting, 703(b) (2).	Requires the adoption of unnecessary reverse targeting prohibition guidelines and injects a confusing “significant purpose” standard. Criteria require consideration of basic investigative tools, such as running name checks.
<b>Sunset</b>	21 months (December 2009).	5 ¾ years (December 2013).	<b>21 months</b> (December 2009).
<b>Compliance Reviews by FISA Court</b>	Requires the FISA Court to assess compliance on a quarterly basis.	Provision declaring that nothing shall prohibit the FISA Court from having inherent power to determine or enforce compliance with its orders, rules, or procedures.	States affirmatively that FISA Court has the power to assess compliance with minimization procedures in the foreign targeting arena. Also declares that nothing shall prohibit the FISA Court from having inherent power to determine or enforce compliance with its orders, rules, or procedures.
<b>Statute of Limitations for Prosecuting Violations of FISA</b>	Increased from 5 years to 10 years	No provision.	Increased from 5 years to 10 years (could permit politically-motivated prosecutions of individuals involved in TSP).
<b>Prospective Liability Protection for Telecommunications Carriers</b>	Provides prospective liability protection for telecom companies that assist with lawful surveillance activities.	Provides prospective liability protection for telecom companies that assist with lawful surveillance activities.	Provides prospective liability protection for telecom companies that assist with lawful surveillance activities. Also, ensures that companies complying with the PAA have liability protection for surveillance that occurred after expiration of PAA.
<b>Individual FISA Order Required for Americans Abroad</b>	No provision.	Requires individual FISA Court order.	Requires individual FISA Court order.
<b>Scope of Authorizations</b>	Allows for collection of intelligence related to terrorism, espionage, and threats to national security.	Allows for collection of all foreign intelligence information.	Allows for collection of all foreign intelligence information.

	<b>RESTORE ACT</b>	<b>Senate Bill</b>	<b>REVISED HOUSE BILL</b>
<b>Provision for WMD Proliferation</b>	No provision.	Includes WMD proliferators in the definitions of “agent of a foreign power” and “foreign intelligence information” (sec 110).	Creates a WMD definition that significantly deviates from existing statutory definition and limits the application of WMD to the definition of “foreign power” and “agent of a foreign power.”
<b>Use of U.S.-Person Information</b>	Establishes a higher threshold for the use of U.S.-person information acquired under this new authority.	Utilizes nearly identical use of information rules required by Title I of FISA for acquisitions under Sections 703 & 704.	Utilizes nearly identical use of information rules required by Title I of FISA for acquisitions, but does not provide an exception to the requirement that the foreign target be notified if there is no court order for emergency authorization.

## Title II: Telecom Liability Litigation Procedures

	RESTORE ACT	Senate Bill	REVISED HOUSE BILL
<b>Retroactive immunity</b>	No retroactive immunity.	<p>Civil liability protection for any telecom company where the AG certifies that assistance was requested as part of the President's warrantless surveillance program.</p> <p>Limits the court to review of such certifications only for abuse of discretion.</p>	<p>No retroactive civil liability protection—forces providers to continue to litigate their good faith.</p> <p>Provides a process to allow the district court to review classified evidence <i>in camera</i> and <i>ex parte</i> (in front of the judge without the plaintiff present).</p> <p>Requires telecommunications companies to assert their defense that they acted lawfully in a classified hearing before the federal judge and strips the Executive Branch of its ability to assert the "state secrets" privilege to protect classified information.</p> <p>This provision requires the litigation of frivolous lawsuits and for companies to defend themselves against unfounded claims of illegal/criminal activity.</p>

## Title III: National Commission on Warrantless Surveillance

	RESTORE ACT	Senate Bill	REVISED HOUSE BILL
<b>Commission on Warrantless Surveillance</b>	No provision.	No provision needed because SSCI conducted extensive bipartisan review of TSP.	<p>Establishes a bipartisan National Commission, appointed by Congress, to investigate and report to Congress and the public about the Administration's warrantless surveillance activities and other intelligence programs.</p> <ul style="list-style-type: none"> <li>• Report would be due in July 2009.</li> <li>• The Commission would have access to highly classified information.</li> <li>• The Commission would have subpoena power.</li> <li>• All meetings/hearings in public if possible.</li> </ul>

